

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) CR-16-00519 LHK
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) JUNE 17, 2020
)
JOHNNY RAY WOLFENBARGER,) PAGES 1-17
)
DEFENDANT.)
_____)

TRANSCRIPT OF TELEPHONIC PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: MARISSA HARRIS
JEFFREY D. NEDROW
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

FOR THE DEFENDANT: OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: SEVERA KEITH
55 SOUTH MARKET STREET, SUITE 820
SAN JOSE, CALIFORNIA 95113

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

JUNE 17, 2020

2 P R O C E E D I N G S

3 (TELEPHONIC PROCEEDINGS CONVENED AT 9:14 A.M.)

4 THE CLERK: CALLING CASE 16-519, UNITED STATES VERSUS
5 JOHNNY RAY WOLFENBARGER.

6 COUNSEL, I'D LIKE TO REMIND YOU TO SPEAK CLEARLY AND ONE
7 AT A TIME TO ASSIST MS. SHORTRIDGE.

8 PLEASE STATE YOUR APPEARANCES ON THE RECORD, STARTING WITH
9 COUNSEL FOR THE GOVERNMENT. THANK YOU.

10 MS. HARRIS: GOOD MORNING, YOUR HONOR.

11 MARISSA HARRIS FOR THE UNITED STATES.

12 MR. NEDROW: AND JEFF NEDROW FOR THE UNITED STATES,
13 YOUR HONOR. GOOD MORNING.

14 MS. KEITH: GOOD MORNING.

15 THIS IS SEVERA KEITH APPEARING ON BEHALF OF
16 MR. WOLFENBARGER, WHO IS PRESENT WITH US ON THE LINE.

17 THE COURT: GOOD MORNING. IS THAT EVERYONE WHO IS
18 GOING TO STATE AN APPEARANCE?

19 THE CLERK: I BELIEVE SO, YOUR HONOR.

20 MS. KEITH: YES, YOUR HONOR.

21 THE COURT: OKAY. THANK YOU.

22 ALL RIGHT. AND MR. WOLFENBARGER, YOU'RE ON THE LINE;
23 CORRECT?

24 THE DEFENDANT: CORRECT.

25 THE COURT: ALL RIGHT. WELL, WELCOME. WELCOME TO

1 EVERYONE.

2 I'LL JUST NOTE FOR THE RECORD THAT WE ARE ALL APPEARING
3 TELEPHONICALLY, THAT GENERAL ORDERS OF THE COURT DO NOT ALLOW
4 ANY IN-PERSON STATUS CONFERENCES, AND THAT WILL BE THE CASE FOR
5 THE MONTH OF JULY AS WELL.

6 SO LET ME HEAR FROM THE PARTIES. AND I HAVE SOME THOUGHTS
7 AS WELL. I DON'T KNOW IF YOU ACTUALLY WANT ME TO GO FIRST.
8 HELLO?

9 MR. NEDROW: YES, YOUR HONOR.

10 JEFF NEDROW ON BEHALF OF THE GOVERNMENT.

11 WE'D BE GRATEFUL FOR THE COURT'S INSIGHTS, AND WE DID HAVE
12 SOME THOUGHTS AS WELL FOR THE GOVERNMENT, AND I'M SURE
13 MS. KEITH DOES AS WELL.

14 THE COURT: OKAY. WELL, I -- I HAVE REALLY BEEN
15 STRUGGLING LONG AND HARD ABOUT THIS QUESTION AND TRYING TO
16 LEARN WHAT I CAN.

17 OUR SAN JOSE COURTHOUSE ACTUALLY, UNFORTUNATELY, HAS
18 FAIRLY NOT HIGH FILTRATION AIR FILTERS. SO IN THE MINIMUM
19 EFFICIENCY REPORTING VALUE FILTERS, SAN JOSE IS ONLY MERV 8,
20 AND WE HAVE NO HIGH EFFICIENCY PARTICULATE MATTER.

21 WE DON'T HAVE ANY HEPA FILTERS, WHICH IS THE MORE HIGH
22 FILTRATION LIKE YOU WOULD GET ON AN AIRPLANE. WE DON'T HAVE
23 THAT AT ALL.

24 WE HAVE MERV 8 PRE-FILTERS AND MERV 11 FINAL FILTERS.

25 OBVIOUSLY THE HIGHEST RATING FOR A MERV FILTER IS 16. BUT EVEN

1 THEN, WHAT IT FILTERS IS AT SUCH A BIG LEVEL THAT IT WOULD NOT
2 FILTER OUT COVID PARTICULATES.

3 SO I JUST HAVE REALLY SERIOUS CONCERNS THAT I COULD NOT
4 GUARANTEE MR. WOLFENBARGER'S SAFETY -- AND HE IS 63 YEARS
5 OLD -- THE SAFETY OF ALL OF YOU, OF THE AGENTS, AND OF THE
6 JURORS.

7 I'M ALSO CLOSELY WATCHING WHAT IS HAPPENING WITH OTHER
8 JURIES. I'VE BEEN WATCHING -- I DON'T KNOW IF YOU KNOW, BUT IN
9 OUR DISTRICT, THERE WAS A CRIMINAL CASE UNDERWAY BEFORE
10 JUDGE ALSUP, AND THERE WAS ACTUALLY A CIVIL CASE UNDERWAY
11 BEFORE JUDGE DONATO, AND THEY HAVE NOT BEEN ABLE TO GET
12 SUFFICIENT JURORS. THEY BOTH DID WANT TO CONTINUE IN JUNE.
13 THEY WERE NOT ABLE TO DO THAT. THE CIVIL CASE, IT'S UNCLEAR
14 WHEN THAT'S GOING TO ACTUALLY GO. THE CRIMINAL CASE, THEY'RE
15 GOING TO TRY AGAIN ON JULY 8TH.

16 BUT I HAVE BEEN READING ALL OF THE JURY SURVEYS, AT LEAST
17 IN JUDGE ALSUP'S CASE, AND WHEN YOU LOOK AT HOW MANY PEOPLE
18 EITHER HAVE AN UNDERLYING HEALTH CONDITION -- THERE ARE A LOT
19 OF PEOPLE WITH HYPERTENSION WHO ARE PRE-DIABETIC OR ARE
20 DIABETIC -- AND YOU LOOK AT HOW MANY PEOPLE ARE IN THE
21 HIGH-RISK AGE GROUPS OR LIVE WITH OR CARE FOR PEOPLE THAT DO,
22 IT BASICALLY IS AN OVERWHELMING MAJORITY OF THE JURORS. AND
23 THEY'RE AFRAID.

24 I HAVE BEEN READING ALL OF JUDGE ALSUP'S SURVEYS, YOU
25 KNOW, EVERY MONTH OR SO WHEN HE SURVEYS HIS JURORS -- AND THOSE

1 ARE PEOPLE WHO HAVE ALREADY BEEN SELECTED AND WHO HAVE ALREADY
2 SERVED. THEY'RE AFRAID TO COME BACK EVEN FOR THE FEW DAYS THAT
3 WOULD BE REQUIRED OF THEM TO RECEIVE THE REST OF THE EVIDENCE,
4 HEAR CLOSING ARGUMENTS, AND DELIBERATE.

5 AND JUDGE DONATO HAS NOT BEEN ABLE TO GET HIS JURY BACK
6 FOR HIS CIVIL CASE.

7 SO THERE IS JUST A TREMENDOUS AMOUNT OF FEAR, AND I COULD
8 NOT GUARANTEE EVERYONE'S SAFETY.

9 SO I -- YOU KNOW, I'M SORRY BECAUSE I HAD EXPRESSED BEING
10 AMENABLE TO TRYING TO DO A TRIAL AS SOON AS POSSIBLE BECAUSE I
11 THINK WE'LL GET THE BENEFIT OF SHELTERING IN PLACE.

12 BUT, YOU KNOW, A LOT OF THE EMPLOYERS IN THIS AREA HAVE
13 TOLD THEIR EMPLOYEES TO WORK FROM HOME THROUGH DECEMBER OF
14 2020, AND SO I THINK A LOT OF THOSE POTENTIAL JURORS WILL NOT
15 UNDERSTAND WHY, IF THEIR EMPLOYER IS SAYING IT'S NOT SAFE FOR
16 THEM TO COME INTO WORK, THEY'RE BEING ASKED TO COME TO THE
17 COURTHOUSE.

18 I MEAN, EVEN NOW, IF I LOOK AT MY CRIMINAL PROCEEDINGS,
19 I'M NOT ALLOWED TO HAVE MORE THAN TEN PEOPLE IN THE COURTROOM.

20 YOU KNOW, THE INTERPRETERS DON'T WANT TO BE IN THE
21 COURTROOM. THAT'S WHY THEY'RE ALL REMOTE.

22 SO EVEN UNDER THE CONDITIONS THAT I CURRENTLY AM ALLOWED
23 TO USE TO HAVE IN-COURT PROCEEDINGS, THEY WOULD NOT ACCOUNT FOR
24 A JURY, WHICH WOULD NECESSARILY INVOLVE AT LEAST 14 JURORS, YOU
25 KNOW, PLUS ALL OF US.

1 I'M JUST SORRY, I DO NOT THINK I CAN GUARANTEE YOUR SAFETY
2 AND I DO NOT FEEL COMFORTABLE DOING IT IN THIS CALENDAR YEAR.

3 SO, NOW, HAVING SAID THAT, YOU KNOW, APPARENTLY AT LEAST
4 ONE PHARMACEUTICAL COMPANY IS RAISING FUNDS THINKING THEY MAY
5 HAVE A VACCINE BY SEPTEMBER.

6 IF THINGS CHANGE SUCH THAT I CAN ASSURE YOUR SAFETY AND I
7 CAN ASSURE THE SAFETY OF JURORS, I'M HAPPY TO RE-EVALUATE AND
8 TRY TO SET YOU A TRIAL AS QUICKLY AS POSSIBLE. YOU KNOW ME, I
9 WANT TO SET TRIAL DATES. I'M ANXIOUS TO GO TO TRIAL, SO YOU
10 WILL GET MY FULL COOPERATION ON THAT SCORE.

11 I JUST FEEL LIKE IN THE CURRENT CIRCUMSTANCES, EVEN -- YOU
12 KNOW, I THINK THERE WAS AN ATTEMPT TO IMPANEL A JURY IN ARIZONA
13 FOR EARLY JUNE. THEY WERE UNABLE TO GET ENOUGH JURORS TO DO
14 THAT.

15 I HAVE BEEN READING WHATEVER I CAN GET MY HANDS ON ABOUT
16 HOW MUCH FEAR PEOPLE HAVE ABOUT EXPOSING THEIR HOUSEHOLDS TO
17 CORONAVIRUS BY GOING TO WORK.

18 I JUST THINK IN THE CURRENT CIRCUMSTANCES, I HAVE SERIOUS
19 DOUBTS THAT I WOULD BE ABLE TO IMPANEL A JURY FOR THE SAME
20 REASONS I'M JUST STATING, THAT I CANNOT GUARANTEE YOUR SAFETY
21 AND I CANNOT GUARANTEE THEIR SAFETY.

22 AND I THINK IN THAT ENVIRONMENT, MR. WOLFENBARGER IS OUT
23 OF CUSTODY, HE'S 63 YEARS OLD, I JUST DON'T SEE ANY SENSE AT
24 THIS TIME IN GOING FORWARD UNTIL I HAVE A VACCINE.

25 I DON'T FEEL COMFORTABLE SETTING A TRIAL IN 2020 IS MY

1 BOTTOM LINE.

2 BUT I'M HAPPY TO HEAR FROM YOU.

3 MS. KEITH: I GUESS, YOUR HONOR -- THIS IS SEVERA --
4 I'LL JUMP IN.

5 SEVERA KEITH.

6 I -- I APPRECIATE YOUR HONOR PUTTING OUT YOUR THOUGHTS
7 LIKE THAT, AND I DO ALSO APPRECIATE YOUR CONCERN FOR EVERYONE'S
8 HEALTH AND SAFETY.

9 I FEEL THE SAME WAY AND, OF COURSE, YOU KNOW, WE HAD
10 TALKED -- I BELIEVE THE DATE WE WERE GOING TO BE LOOKING AT WAS
11 EARLY DECEMBER WAS THE ONE THAT WAS MOST BEING TALKED ABOUT
12 WHEN WE LAST MET.

13 BUT AT THIS POINT I SHARE MANY OF THE SAME CONCERNS
14 REGARDING SAFETY. OF COURSE I'M VERY CONCERNED ABOUT MY
15 CLIENT. QUITE FRANKLY, I'M CONCERNED ABOUT MY OWN AND MY
16 FAMILY'S WELL.

17 AND I DO THINK THE REALITY -- I'M NOT SURPRISED, YOUR
18 HONOR, TO HEAR WHAT JUDGE ALSUP'S JURORS, OR POTENTIAL JURORS,
19 ARE EXPRESSING. THAT WAS SOMETHING THAT -- CHOOSING THE JURY
20 IS SOMETHING THAT I THINK IS GOING TO BE A HUGE CHALLENGE,
21 PARTICULARLY BECAUSE A LOT OF THE -- A GREAT NUMBER OF OUR JURY
22 POOL ARE ALSO OVER THE AGE OF 60. YOU KNOW, IF ANYTHING, IT'S
23 MORE THAN PROBABLY THEIR PROPORTION OF THE POPULATION, THEY'RE
24 KIND OF OVERREPRESENTED IN JURY POOLS FROM MY EXPERIENCE. SO
25 THAT'S ANOTHER FACTOR WITH JURORS.

1 AND, AGAIN, AND I WILL JUST ADD, UNDER THESE
2 CIRCUMSTANCES -- I GUESS THIS IS SOMETHING WE CAN DISCUSS
3 LATER -- I DON'T -- I DON'T KNOW IF UNDER -- BECAUSE OF THIS
4 HEALTH CRISIS AND THE UNCERTAINTIES AND THE POSSIBILITIES OF
5 PEOPLE HAVING TO DROP OUT OF THE JURY, I DON'T KNOW THAT IT
6 WOULD BE A GOOD IDEA TO ONLY IMPANEL TWO ALTERNATES IN THIS
7 CASE UNTIL A TIME WHEN THE COVID SITUATION HAS BECOME MORE
8 STABLE.

9 THE COURT: NOW, I UNDERSTAND THAT -- I THINK
10 MS. HARRIS SET HER TRIAL BEFORE JUDGE FREEMAN FOR THAT EARLY
11 DECEMBER TIMEFRAME.

12 MS. HARRIS: YES, YOUR HONOR. SO LET ME JUST SPEAK
13 TO THAT A LITTLE BIT.

14 FIRST OF ALL, UNFORTUNATELY, IT WAS A DAY WHERE I WAS
15 DOUBLE CONFLICTED, SO I WAS PRESENT FOR AN ARRAIGNMENT IN ONE
16 OF MY OTHER SEX ASSAULT CASES AND MY TRIAL PARTNER,
17 MS. GRISWOLD, WAS HANDLING THE GUIZAR-CUELLAR, ET AL., STATUS
18 CONFERENCE BEFORE JUDGE FREEMAN.

19 THAT'S THE TIME PERIOD ULTIMATELY THAT JUDGE FREEMAN
20 WANTED TO SET, SO THAT WAS A LITTLE BIT OUT OF MY CONTROL.

21 BUT THAT BEING SAID, YES, I AM UNAVAILABLE IN EARLY
22 DECEMBER AT THIS TIME. YOU KNOW, BUT I -- YOU KNOW, THAT CASE,
23 I WILL NOTE, IS ACTUALLY OLDER THAN THIS CASE. THAT WAS
24 CHARGED IN APRIL OF 2016 AND THIS ONE WAS CHARGED IN DECEMBER
25 OF 2016.

1 SO THESE TWO CASES ARE DEFINITELY MY PRIORITY. I WILL BE
2 GRATEFUL TO EVEN GET ONE OF THEM FINISHED THIS YEAR.

3 THE COURT: UM-HUM.

4 MS. HARRIS: SO, YOU KNOW, IF IT MEANS THAT THIS ONE
5 HAS TO BE PUSHED INTO 2021, THAT -- I MEAN, IT IS WHAT IT IS.
6 I DON'T THINK ANYBODY ANTICIPATED THIS VIRUS, THE EFFECT THAT
7 IT WOULD HAVE BROADLY ON SOCIETY, OR THE EFFECT THAT IT WOULD
8 SPECIFICALLY HAVE IN TERMS OF THE LOGISTICS OF HAVING ANY SORT
9 OF A GATHERING OVER TEN PEOPLE.

10 I MEAN, I AGREE WITH EVERYONE'S ASSESSMENT THAT WE'RE IN
11 EXTRAORDINARY CIRCUMSTANCES HERE AND I WOULDN'T WANT ANYONE TO
12 BE, YOU KNOW, PUT AT UNDUE RISK, YOU KNOW, SOLELY FOR THE SAKE
13 OF EXPEDIENCY, YOU KNOW, OF GETTING IT DONE. THAT'S NOT --

14 THE COURT: UM-HUM.

15 MS. HARRIS: -- NECESSARILY A FAIR CALCULUS TO MAKE,
16 YOU KNOW, WHEN IT'S PEOPLE'S LIVES AND POTENTIALLY THE LIVES OF
17 THEIR FAMILY THAT ARE PUT AT RISK BY OUR DECISION TO GO
18 FORWARD.

19 THAT BEING SAID, I HAVE NOT HAD THE OPPORTUNITY TO QUERY
20 ANY OF OUR WITNESSES AS TO THEIR AVAILABILITY IN 2021.

21 THE COURT: UM-HUM.

22 MS. HARRIS: YOU KNOW, MY QUESTION REALLY SORT OF
23 ONLY WENT UNTIL THE END OF THE YEAR. SO MY REQUEST WOULD BE
24 THAT WE COME BACK -- YOU KNOW, WE CAN SORT OF MAYBE SET A
25 STATUS DATE TOWARDS THE END OF THE SUMMER OR IN A MONTH,

1 WHENEVER YOU'D ALL LIKE, AND MAYBE AT THAT TIME WE'LL BE
2 PREPARED TO DISCUSS A GOOD DAY IN 2021 FOR THE TRIAL.

3 I DO NOTE, HOWEVER, YOU KNOW, I AM NOT CERTAIN THAT THE
4 HOPE FOR A QUICK VACCINE IS A REALISTIC ONE.

5 THE COURT: UM-HUM.

6 MS. HARRIS: YOU KNOW, AS -- MAYBE SEPTEMBER OF THIS
7 YEAR, OR EVEN EARLY NEXT YEAR, IS AS FAST AS THEY CAN GET SOME
8 CLINICAL TRIALS TO ACTUALLY APPROVE THE THING FOR HUMAN
9 CONSUMPTION AND USE IN PEOPLE, THAT THAT DATE HAS REALLY
10 NOTHING TO DO WITH ACTUAL INOCULATE -- THE LOGISTICS OF
11 INOCULATING PEOPLE AND THE NUMBER OF PEOPLE BEING INOCULATED
12 AGAINST THE VIRUS IN ORDER FOR IT TO HAVE ANY IMMUNOPROTECTIVE
13 EFFECT.

14 SO I DON'T EXPECT THAT TO THE EXTENT THAT A VACCINE FOR
15 THE VIRUS IS DEVELOPED EVEN EARLY NEXT YEAR, THAT FOLKS WILL BE
16 FINALLY CLEARED TO GO AS WE DID, YOU KNOW, FOUR MONTHS AGO
17 WITHOUT FEAR OF ANY SIGNIFICANT RISK OF EXPOSURE PROBABLY UNTIL
18 MID TO LATE NEXT YEAR, EVEN IF THEY DO GET IT DONE LATE THIS
19 YEAR OR VERY EARLY NEXT YEAR.

20 I MEAN, THAT'S -- THE PROCESS OF WHO GETS IT FIRST IS
21 PROBABLY GOING TO BE EXTREMELY CONTENTIOUS. SO --

22 THE COURT: I WOULD BE FINE IF YOU WANTED TO SET IT
23 FOR NEXT SUMMER OR NEXT FALL, YOU KNOW, TO SET A MORE REALISTIC
24 DATE BECAUSE, FRANKLY, LET'S SAY WE WERE TO SET JANUARY 2021.
25 THE LIKELIHOOD THAT WE WOULD ALL BE HERE RE-EVALUATING WHETHER

1 THAT'S SAFE AND FEASIBLE AND WHETHER WE CAN IMPANEL ENOUGH
2 PEOPLE WHO ARE WILLING TO SIT THROUGH A LONG TRIAL IS HIGH.

3 SO I AM OPEN. I JUST APPRECIATE YOUR FLEXIBILITY AND YOUR
4 UNDERSTANDING.

5 EXCUSE ME.

6 SO IF YOU WANTED TO GO INTO THE SUMMER OF 2021, I,
7 FRANKLY, THINK THAT WOULD BE A MORE REALISTIC DATE.

8 SO I KNOW YOU NEED TO ALL CHECK WITH YOUR WITNESSES,
9 BUT -- I DON'T SEE THE NEED TO PICK AN EARLY DATE IN 2021 THAT
10 IS PROBABLY NOT LIKELY TO STICK. SO I'M DEFINITELY --

11 MS. HARRIS: OKAY.

12 THE COURT: YEAH, IF YOU'RE OPEN TO DOING A MORE
13 REALISTIC DATE, THEN LET'S SET THAT PLAN AND THEN YOUR
14 WITNESSES DON'T HAVE TO BE INCONVENIENCED IN SETTING ALL THESE
15 DATES ASIDE FOR A TRIAL THAT MAY NOT HAPPEN.

16 MS. HARRIS: YEAH.

17 THE COURT: BUT, YOU KNOW, I UNDERSTAND THAT, YOU
18 KNOW, THIS CASE WAS INDICTED A LONG TIME AGO. I WILL
19 PRIORITIZE YOUR CASE FOR THE DATES THAT YOU WANT.

20 BUT I THINK SUMMER MAKES SENSE TO ME, OR FALL IF YOU'RE
21 WILLING TO WAIT THAT LONG.

22 MS. HARRIS: OKAY. WELL, MY RECOMMENDATION IS THAT I
23 WOULD JUST LIKE -- I MEAN, EVEN MAYBE A COUPLE WEEKS TO JUST
24 CHECK WITH -- TO MAKE SURE THAT THERE'S NO, LIKE, WEDDINGS OR
25 BABIES THAT ARE PLANNED, YOU KNOW, LIKE THE THINGS THAT PEOPLE

1 PLAN FOR AND WOULD MAKE THEM UNAVAILABLE IN THE SUMMER OF NEXT
2 YEAR.

3 THE COURT: UM-HUM.

4 MS. HARRIS: AND THEN AT THAT TIME I WOULD BE READY
5 TO COME BACK AND SAY, YOU KNOW, OKAY, THESE ARE THE GOOD DATES,
6 THESE ARE THE GOOD MONTHS, AND I GUESS WE COULD PROCEED FROM
7 THERE.

8 THE COURT: THAT'S FINE. AND PICK YOUR TIME. I
9 MEAN, WE'RE NOW TALKING ABOUT A TRIAL A YEAR OFF, SO, YOU KNOW,
10 PICK YOUR TIME. YOU CAN TAKE MORE THAN A FEW WEEKS TO FIGURE
11 OUT WHAT IS THE BEST DATE, ALTHOUGH I DO WANT TO MAKE SURE THAT
12 WE SET ASIDE THOSE DATES -- BECAUSE OBVIOUSLY A LOT OF THINGS
13 ARE GETTING CONTINUED RIGHT NOW -- FOR YOU AND TO MAKE SURE
14 THAT THIS CASE GETS PRIORITY.

15 NOW, LET ME ASK -- LET ME ASK MS. DIBBLE, I KNOW WE SET
16 MR. BARAMA'S TRIAL IN MAY, JUNE? IS THAT RIGHT?

17 THE CLERK: I THINK A LITTLE EARLIER THAN THAT. LET
18 ME PULL UP THE EXACT DATES.

19 THE COURT: OKAY.

20 THE CLERK: EXCUSE ME, I'M WRONG. YES, IT STARTS ON
21 MAY 17TH.

22 THE COURT: OKAY.

23 THE CLERK: AND IT CONCLUDES -- ONE MOMENT -- ON
24 JUNE 7TH.

25 THE COURT: OKAY. I MEAN, I WOULD PREFER NOT TO SET

1 A CRIMINAL TRIAL ON TOP OF ANOTHER CRIMINAL TRIAL. I'M FINE
2 WITH SETTING A CRIMINAL TRIAL AT THE SAME TIME AS A CIVIL TRIAL
3 BECAUSE CRIMINAL CASES WILL TAKE PRECEDENCE AND I'LL JUST HAVE
4 TO CONTINUE THE CIVIL ONE.

5 BUT I WILL TRY TO, YOU KNOW, GIVE PRIORITY TO THIS CASE,
6 AND YOU ALL TELL ME WHATEVER DATES YOU WANT AND I WILL, YOU
7 KNOW, MAKE SURE NOT TO SET ANY CRIMINAL CASE AT THE SAME TIME.
8 I MAY SET A CIVIL CASE, BUT OBVIOUSLY IF THEY BOTH GO TO TRIAL,
9 YOURS WILL GO AND THEIRS WILL NOT.

10 SO I'M OPEN TO WHENEVER YOU WOULD LIKE TO COME BACK AND
11 TRY TO SET SOMETHING FOR A REALISTIC TRIAL DATE.

12 MS. KEITH: YOUR HONOR, I WOULD -- SINCE THERE ARE A
13 LOT OF MOVING PARTS, AND I KNOW THAT THE GOVERNMENT HAS A LOT
14 MORE WITNESSES AND LOGISTICS TO DEAL WITH THAN I DO, BUT I CAN
15 CERTAINLY GET OUR AVAILABILITY, AND PERHAPS IF WE CAME BACK AND
16 GAVE OURSELVES, I WOULD SAY -- I WOULD SAY AT LEAST A COUPLE OF
17 MONTHS TO COME BACK SO THAT WE WOULD HAVE AMPLE TIME TO CONFIRM
18 AND MAYBE RECONFIRM WITH PEOPLE ONCE WE HAD SOME POSSIBLE
19 DATES.

20 BUT MS. HARRIS AND MR. NEDROW AND I COULD CONFER OVER
21 DATES AS WELL AND BE PREPARED WITH THOSE AND READY BY THE TIME
22 WE COME BACK TO COURT SO THAT WE DON'T HAVE TO DO IT ON THE
23 RECORD, YOU KNOW, KIND OF A NEGOTIATION OF WHAT DATES ARE
24 AVAILABLE.

25 THE COURT: OKAY.

1 MS. HARRIS, MR. NEDROW, WHEN DO YOU WANT TO COME BACK TO
2 SET A TRIAL DATE?

3 MS. HARRIS: WOULD THE -- HOW ABOUT TOWARD THE END OF
4 JULY? WOULD THAT WORK?

5 OR IS THAT NOT ENOUGH TIME, SEVERA?

6 MS. KEITH: I MEAN, I THINK THAT SHOULD BE ENOUGH
7 TIME, I MEAN, FOR MYSELF.

8 LIKE I SAID, I JUST KNOW THAT YOU HAVE A LOT MORE PEOPLE
9 COMING FROM DIFFERENT PARTS OF THE COUNTRY. SO I WILL -- IF
10 IT'S ENOUGH TIME FOR YOU, I'M HAPPY -- I CAN DEFINITELY, YOU
11 KNOW, GET SOME POTENTIAL DATES I THINK BY THE END OF JULY.

12 MR. NEDROW: AND THAT'S -- THANK YOU VERY MUCH.
13 THAT'S FINE, I THINK, FROM THE GOVERNMENT'S PERSPECTIVE.

14 IF I MAY, FOR THE COURT AND COUNSEL, I'D LIKE TO REQUEST
15 NOT TO HAVE THE HEARING ON JULY 22ND. I THINK I MIGHT BE OUT
16 OF TOWN THAT DAY.

17 BUT IF IT'S POSSIBLE TO DO IT ON THE 29TH OR THE FIRST
18 WEEK OF AUGUST, AND IF THAT'S AROUND SIX, SEVEN WEEKS, PERHAPS
19 THAT ACCOMMODATES ALL THE CONCERNS IN TERMS OF TIME, BUT ALSO
20 GETS US SET ON THE CALENDAR FOR NEXT YEAR.

21 THE CLERK: AND JULY 29TH WORKS WELL FOR THE COURT'S
22 CALENDAR.

23 MS. HARRIS: JULY 29TH IS FINE FOR ME.

24 MS. KEITH: AND FOR THE DEFENSE AS WELL.

25 THE COURT: OKAY. ALL RIGHT. THEN LET'S HAVE OUR

1 NEXT STATUS CONFERENCE JULY 29TH OF 2020 AT 9:15. MOST LIKELY
2 WE SHOULD JUST GO AHEAD AND STILL DO IT BY TELEPHONE. IS THAT
3 FINE FOR EVERYONE?

4 MS. HARRIS: YES, YOUR HONOR.

5 MS. KEITH: YES, YOUR HONOR.

6 THE COURT: OKAY.

7 MR. NEDROW: YES, YOUR HONOR.

8 THE COURT: WE ARE TRYING TO CONTINUE MINIMIZING THE
9 NUMBER OF PEOPLE IN THE COURTHOUSE DURING THIS PANDEMIC, SO
10 THAT WOULD BE GREAT TO HAVE THAT BY PHONE.

11 NOW, I DO NEED TO MAKE A SPEEDY TRIAL FINDING BECAUSE WE
12 HAVE NO TRIAL DATE AT THIS TIME.

13 SO LET ME ASK, MS. KEITH, ARE YOU REQUESTING, ON BEHALF OF
14 MR. WOLFENBARGER, FOR A CONTINUANCE -- I GUESS THERE ARE A
15 COUPLE OF FACTORS THAT COULD APPLY. YOU KNOW, WE CAN'T
16 CONTINUE TO TRIAL THIS YEAR. I THINK I WOULD MAKE AN
17 IMPOSSIBILITY FINDING UNDER 3161(H) (7) (B) (1), BUT ALSO JUST FOR
18 EFFECTIVE PREPARATION, FOR CONSULTING WITH WITNESSES, FOR TRIAL
19 AVAILABILITY. ANY OTHER BASES THAT YOU'RE REQUESTING AN
20 EXCLUSION OF SPEEDY TRIAL TIME?

21 MS. KEITH: NO, YOUR HONOR, BUT I AM REQUESTING AN
22 EXCLUSION OF TIME BASED ON THE FACTORS THE COURT JUST CITED.

23 THE COURT: OKAY. ALL RIGHT.

24 AND MS. HARRIS, YOU AGREE WITH THE SPEEDY TRIAL TIME
25 EXCLUSION?

1 MS. HARRIS: YES, YOUR HONOR, AND ALSO ON THE BASIS
2 OF PENDING MOTIONS.

3 THE COURT: OH, THAT'S RIGHT. OKAY. THAT'S RIGHT.

4 ALL RIGHT. THE COURT GRANTS THE CONTINUANCE ON THE MOTION
5 OF BOTH COUNSEL. THE COURT FINDS THE ENDS OF JUSTICE SERVED IN
6 GRANTING THE CONTINUANCE OUTWEIGH THE BEST INTERESTS OF THE
7 PUBLIC AND MR. WOLFENBARGER IN A SPEEDY TRIAL.

8 A FAILURE TO GRANT THIS CONTINUANCE WOULD BE LIKELY TO
9 MAKE A CONTINUATION OF THIS PROCEEDING IMPOSSIBLE AND RESULT IN
10 A MISCARRIAGE OF JUSTICE BECAUSE WE, FOR ALL THE REASONS
11 STATED, CANNOT GO TO A JURY TRIAL IN 2020 IN LIGHT OF THE
12 COVID-19 PANDEMIC AND THE RISKS TO PUBLIC HEALTH AND SAFETY AND
13 ALL INVOLVED.

14 IN ADDITION, A FAILURE TO GRANT THE CONTINUANCE WOULD DENY
15 COUNSEL FOR BOTH SIDES REASONABLE TIME NECESSARY FOR EFFECTIVE
16 PREPARATION, TAKING INTO ACCOUNT THE EXERCISE OF DUE DILIGENCE.

17 MOREOVER, TRIAL IS -- THE SPEEDY TRIAL TIME IS
18 AUTOMATICALLY EXCLUDED BECAUSE WE STILL HAVE A MOTION TO
19 SUPPRESS PENDING.

20 THAT IS THE ONLY MOTION THAT IS PENDING; CORRECT? IT'S
21 THE MOTION TO DISMISS INDICTMENT? WE DECIDED -- THE OTHER
22 PRETRIAL CONFERENCE MOTIONS WERE ALL DECIDED, AND THE OTHER
23 ISSUE WAS DECIDED.

24 MS. HARRIS: ONE OTHER ONE, YOUR HONOR. I BELIEVE WE
25 STILL HAVE OUTSTANDING THE MOTION REGARDING THE CHATS.

1 THE COURT: IS THAT SEPARATE FROM THE MOTION TO
2 SUPPRESS?

3 MS. HARRIS: IT IS, YES, YOUR HONOR.

4 THE COURT: OKAY. SO THEN THERE ARE -- I APOLOGIZE.
5 THERE ARE TWO MOTIONS THEN PENDING?

6 MS. HARRIS: I BELIEVE SO, YOUR HONOR.

7 THE COURT: OKAY. ALL RIGHT. I APOLOGIZE. I
8 THOUGHT THERE WAS ONLY A MOTION TO SUPPRESS PENDING.

9 OKAY. ALL RIGHT. WHAT ELSE DO WE NEED TO DISCUSS TODAY?
10 ANYTHING ELSE?

11 MS. HARRIS: NOT -- NOT THAT I KNOW OF FROM THE
12 GOVERNMENT, YOUR HONOR.

13 MR. NEDROW: NOTHING FURTHER, YOUR HONOR.

14 MS. KEITH: NOTHING FROM THE DEFENSE.

15 THE COURT: MS. KEITH?

16 MS. KEITH: YES. NOTHING FROM THE DEFENSE.

17 THE COURT: OKAY. WELL, THANK YOU ALL VERY MUCH.
18 THANK YOU FOR YOUR UNDERSTANDING AND YOUR PATIENCE.

19 AND WE WILL THEN MEET AGAIN TELEPHONICALLY ON JULY 29TH.
20 TAKE CARE. TAKE CARE, EVERYONE.

21 MS. HARRIS: THANK YOU, YOUR HONOR.

22 MR. NEDROW: THANK YOU, YOUR HONOR.

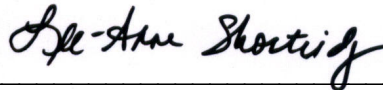
23 MS. KEITH: THANK YOU, YOUR HONOR.

24 (THE PROCEEDINGS WERE CONCLUDED AT 9:39 A.M.)
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF TELEPHONIC PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: JUNE 30, 2020